

CLINICAL PROGRAMS

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Arizona State University College of Law FORUM is published for alumni, students, faculty and friends.

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From The Director...

In 1933, Professor (later Judge) Jerome Frank suggested what was then an unthinkable notion – law schools, he said, should provide students with some component of clinical legal education. In this now classic article, Frank pointed out that through clinical education, students can appreciate the working context within which “legal rights and duties” apply and are in fact “inextricably intertwined.” Over time, academicians came to accept clinical legal education as a fundamental part of a law school’s curriculum, and ASU College of Law helped lead the way.

Thirty years ago, our clinical program was founded and taught by Professors Arthur LaFrance and Michael Berch. Over the years, ASU law students received supervision on their case work from an impressive group of nationally recognized clinical educators, including Beatrice Moulton, David Binder, and Gary Lowenthal.

Several years ago, the clinic faculty developed a detailed set of educational objectives. I find myself reviewing these objectives frequently as I supervise students on their cases or prepare for a clinical class. In general, our goals in the ASU clinical program include working with students to:

- (1) develop analytical and advocacy skills;
- (2) respond appropriately to client needs;
- (3) develop creative and collaborative problem-solving skills;
- (4) foster professionalism;
- (5) serve the community by representing persons who otherwise would not have access to counsel or the justice system; and
- (6) critically examine the justice system and other public institutions.

In the Civil Practice Clinic, students and faculty meet as a group each week to select the cases we will work on with an eye toward accomplishing these educational objectives. We look for cases that will provide students with a whole case experience in one semester. We believe that students will learn more

about professionally representing clients when they have responsibility for an entire small case themselves rather than working on a little piece of a large case. Thus, we work frequently in the administrative court system on unemployment insurance and developmental disabilities cases. In addition, we represent clients on small general civil matters.

Over the last few years, we have been developing an expertise in representing clients with developmental disabilities. This year, we expect to begin working with people who have serious mental illnesses. In their attempt to receive benefits, many people are finding it impossible to prove they are seriously mentally ill without legal representation.

We are excited about what the future has in store for the clinical program. Next summer we will begin the renovation of our out-dated courtroom into a state-of-the-art Computer Integrated Courtroom/Classroom. In Arizona and nationwide, courtrooms are being designed with the latest in computer technology. We have a responsibility to prepare students to practice law in this environment; thus, our courtroom project is timely and important.

We are proud to continue our fine tradition of providing students with outstanding opportunities to learn about professional client representation by working on real cases. If you would like to hear more about the clinical program, please call us at 480-965-6968. I will be on a research sabbatical next year – working on some projects that explore the multi-faceted dimensions of the legal profession – but I know Professor Bob Dauber, the interim director, will be happy to hear from you.



Catherine G. O'Grady
Director of Clinical Programs

Catherine O'Grady

CLINICAL FACULTY

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Mediation Clinic
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HUGO ZETTLER

*Faculty Associate,
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Criminal Practice Clinic

by Hugo Zettler

For the past 23 years I have taught the Criminal Practice Clinic. When I first started, the law school didn't have a courtroom and trial advocacy was something that most academics thought should be learned after graduation.

The first mock trial that my class did was held in another building on campus where the audiovisual department was located. We created a courtroom out of desks, tables and boxes and videotaped the trials on one-inch tapes. Thankfully, in the past 23 years a lot has changed.

During my tenure, I never thought that it was my job, or the purpose of the Clinic, to make prosecutors out of my students. The Clinic is designed to provide students the maximum amount of courtroom experience and to learn trial advocacy. Although some students never considered becoming criminal trial lawyers before taking the Clinic, after a semester in court and gaining experience and confidence, they wouldn't consider doing anything else.

While I was a prosecutor for over 30 years, I never considered myself a typical one. I attribute this to the fact that I was fortunate enough to teach with clinicians at the law school, who helped me to become a fairer and more balanced prosecutor.

If there is one principle that I tried to instill in all my students, it is that the role of the prosecutor is not just to get convictions but to seek justice, which sometimes includes dismissing cases. When prosecutors enter the courtroom, they speak for all of the people, not just some of the people.

Although I would like to take sole credit for the success of the Clinic, in truth most of the credit lies with the prosecutor offices that participate in the program. Students have been assigned to offices in Phoenix, Tempe, Mesa, Chandler, Scottsdale, Glendale and Gilbert. Without the cooperation and support of these offices, the Clinic's courtroom experiences would be artificial. Another benefit of having taught the Clinic for so long is that most of the prosecutors assigned to supervise my students are also former students who understand the goals of the program.

Now that I have retired from the prosecution business, it is time someone else takes a turn teaching the Clinic. This fall, Patrick Gann will team-teach with me. Gann is a former Clinic student, who during his nine months in the Clinic prosecuted 13 jury trials.

“The Criminal Practice Clinic is designed to provide students the maximum amount of courtroom experience and to learn trial advocacy.”



Hugo Zettler



Dan Lowrance

Gann spent four and a half years as a prosecutor with the Maricopa County Attorney's Office handling high profile alcohol-related cases. That office chose him the Outstanding Prosecutor of the Year in 1998. Currently, he is a prosecutor with the City of Chandler and I know he will be a great asset to the program.

Hugo Zettler is a Hearing Officer for the Maricopa County Superior Court.

Public Defender Clinic

by Dan Lowrance

I feel that every student has a gift whether it is in client contact and counseling, negotiating with the prosecutors, writing motions and briefs, critically evaluating the cases or trial advocacy. Hopefully, by the time students leave the Public Defender Clinic, they will know what their strong points are, what their weak points are, and how to improve.

I supervise four or five students every semester, and I am grateful that the Public Defender's Office allows me to devote most of my time to this endeavor. At the beginning of the semester, I give students small tasks, see how they perform and give them ideas for improvement. In the middle of the semester we sit down and talk about their strengths and weaknesses and what they would like to work on. As expected, most students want to work where their strengths lie and that's okay. I want to nurture that.

However, to be effective in representing

“By the time students leave the Public Defender Clinic, they will know what their strong points are, what their weak points are, and how to improve.”

clients, a lawyer must be good in all areas; therefore, we also spend time on students' weaknesses. At the end of the semester, we talk about and continue to

build on their strengths and how to improve their weaknesses.

We also spend time on professionalism. To disagree without being disagreeable is one of the key elements of being a healthy and happy attorney. It will prevent the burnout and frustration many lawyers feel. If we as attorneys cannot go about our business with professionalism and dignity, how can we expect people outside the system to have any respect for it?

In the end, I hope the students had fun, learned a little about the law and a lot about themselves and gained the skills to succeed in this profession.

Dan Lowrance is an attorney with the Maricopa County Public Defender's Office.

My View

by Joel E. Parker, MD

The ASU Civil Practice Clinic has been a valuable resource for my practice as a psychiatrist. The Clinic has taken several cases upon my referral, and my patients have been universally pleased with the outcome. My patients have enjoyed their interactions with the students, and have described the atmosphere as comfortable and professional. The Clinic has helped them negotiate what they perceive to be an overwhelmingly complex legal process.

Approximately 25 percent of my private practice patients suffer from a developmental disability such as mental retardation, autism,

cerebral palsy, or epilepsy. These vulnerable citizens occasionally need legal assistance. Because they suffer from complex medical conditions, which require continuous treatment, their situations put them at risk, since no single person oversees their best interests.

The ASU Civil Practice Clinic has provided pro bono expertise to the families or foster families of these patients in their pursuit of developmental disabilities benefits. Although several state and federal programs exist to provide housing, vocational training, medical treatment, and respite care, many of these patients

have an impossible time demonstrating that they qualify. Without such assistance, they often have extremely limited options. During my career, I have seen the standards for acceptance into some of these programs change several times. Furthermore, the tests for measuring “functionality” are subject to a variety of interpretations.

The Clinic has been instrumental in fighting for these clients’ benefits. The students and supervisors have assisted families in obtaining basic services which allow these adults to lead more productive lives.

In one recent case, the Clinic won previously denied Department of Economic Security (DES) benefits for a

mentally retarded woman. When DES appealed the decision, a three-judge Appeals Board affirmed the decision to grant the benefits. The Clinic thus twice succeeded on behalf of this woman.

The Clinic has been an asset to my practice. It has allowed my patients to navigate the legal system effectively and professionally and I look forward to a continued collaboration.



Catherine G. O’Grady, Director of Clinical Programs and Joel E. Parker, MD

Faculty and Staff News

Visiting Professor Ben Barton, now in his second year, taught Lawyering Theory & Practice last spring, supervised students in the Civil Practice Clinic, and still managed to complete an article analyzing the ethical rules.

The clinic administrative office continues to be professionally staffed by Office Manager **Teresa Bradshaw**, who has been with the clinic for nine years, and Administrative Assistant **Karen (“Sparky”) Barnett**, who has been with us for four years. Teresa recently celebrated the one-year anniversary of her kidney transplant operation – she donated one of her kidneys to her husband Peter. Sparky joyfully announces that she will be getting married this October.

Professor Bob Dauber was awarded the Outstanding Faculty Award from the Maricopa County Bar Association in recognition of his contributions to teaching and service.

Michael Gordon, who was the Civil Practice Clinic’s visiting professor from 1997-98, will be returning to Phoenix to work at the law firm Streich Lang. He will again join the Civil Practice Clinic as a faculty associate.

Last year, **Beth Hoffman** and **Elliott Talenfeld** served as adjunct professors in the Civil Practice Clinic.

Marty Latz will be entering his sixth year of teaching our Negotiation class, where students work each week on simulated exercises that are designed to help them improve their negotiation skills and increase their effectiveness as negotiators.

Jon Sands and **David Eisenberg** continue to teach Trial Advocacy to our students. The Trial Advocacy classes are popular simulation offerings where students learn courtroom technique and strategy from these experienced adjunct professors.

Adjunct **Professor Hugo Zettler** received an award from the ASU College of Law Alumni Association for his outstanding teaching and dedication to the clinical program.

Adjunct professors also work with our students each semester in the Lawyering Theory and Practice class. Our adjunct professors last year were **Larry Cohen, Joel Nomkin, Chip Harris, Leslie Hall, Michelle Lind** and **Judges Linda Akers, Stephen Gerst, Barry Schneider** and **Edd Ballinger**.

The clinical program benefits tremendously from the assistance of adjunct clinical professors. Adjunct professors are lawyers from the community who either teach classes or work with our students on cases during a semester or an academic year.

THE LONGEST CASE by Lisa Duran

In the summer of 1998, I was both pleased and flattered to receive a call from Cathy O'Grady, the Director of Clinical Programs, who inquired whether I would be interested in serving as an adjunct professor. A Clinic alumnus myself, I had always been an outspoken supporter of the College's clinical programs and the strong advocacy skills they foster, so I welcomed the opportunity to help supervise, mentor and train a new generation of litigators.

My original two-semester commitment stretched into five, as I remained to supervise the last part of a political asylum-related immigration case that had been pending in the Clinic for more than a decade. All of the clients in this case were El Salvador nationals and relatives of the Archbishop Romero, who was assassinated for his opposition to the El Salvadoran government.

Over the years, all of the clients except one were granted political asylum or were sponsored for permanent residency by immediate family members. The remaining client had been living in Phoenix and working with the INS' permission since 1984, when he filed for, and was denied, political asylum. While his procedurally complex appeal was pending, our client married a Salvadoran woman, who was a legal permanent resident, established a stable employment history, purchased a home, and had four United States citizen children. Ultimately, our client's wife became a U.S. citizen, which entitled him to request that the immigration judge presiding over his deportation proceedings grant him permanent resident status without delay.

But there was delay because our client's file had been misplaced at the Board of Immigration Appeals in Falls Church, Virginia. The clinicians in charge of this case dedicated dozens of hours to obtain the file's return to the Phoenix Immigration Court, where it was discovered that the original green card paperwork, filed in 1996, had also been misplaced.

After several continuances, on March 2, 2000, student-attorneys Ingrid Rojas and Ed Maldonado stipulated with the INS trial attorney to accept re-executed copies of the originally filed paperwork. I watched proudly as they took our client and his wife through their testimony to establish our client's entitlement to permanent residency. There was not a dry eye in the courtroom when Immigration Judge John W. Richardson stepped down from the bench to welcome our client as a legal permanent resident of the United States.

The satisfactory resolution of this case is a tribute to the hard work and creativity of dozens of clinicians and faculty over the years, and it highlights why clinical education is critical to the professional development of new lawyers.

Lisa Duran is a partner at Streich Lang.



My Experience in the Civil Practice Clinic

By Mark C. Hudson

I could recite many benefits that I received as a student in the Civil Practice Clinic, but I will mention just three. First, the clients I served in the Clinic truly needed legal services and probably would not have found them anywhere else.

Second, I learned and practiced skills not taught in other classes or in the part time jobs I held during school. Last, but certainly not least, was the boost in confidence that came from "just doing it."

During my first week

in the Clinic, I wondered what I had gotten myself into. It was bewildering and intimidating. I quickly found out that lawyering involves a lot of work and responsibility. We were taking calls from prospective clients the second week, before the class on taking calls from prospective clients! But this was learning by doing, not learning by watching and listening.

Of course, the faculty and staff in the Clinic provided great direction and feedback. They made it clear, however, that the responsibility was mine,

and having this responsibility was a necessary part of the experience.

During the semester, I discovered several things: (1) I could do the work, which differed every day, (2) I wanted to do it because these were my cases and my clients were counting on me and (3) I liked doing it because the work was important and challenging.

At the end of the semester, I realized one more thing. It wasn't bewildering or intimidating anymore. It was work, to be sure, but I had succeeded and thrived. I

gained the confidence that I can do whatever comes next. That's something no one could have taught me. The Clinic gave me the opportunity and environment in which to learn and experience it for myself and for that I say thank you.

Mark Hudson graduated in May from A.S.U. College of Law. He was a recipient of the International Trial Advocacy graduation award, in recognition of his work in the clinical program.

MY PATH TO MEDIATION by Ann E. Woodley



As I am about to begin my new position as the Director of the Lodestar Mediation Clinic, I thought I would share with you the path that led me here.

I have a litigation background...first, as a clerk in the federal district court, and second, as a litigator in the Washington, D.C. office of a large Chicago-based law firm. My law practice consisted mainly of commercial litigation and employment-related lawsuits.

While I enjoyed practicing law, I found it increasingly frustrating to spend years working on a lawsuit, and many thousands of dollars, only to have the client tell me on the eve of trial that he really wanted to settle the case. And settle we did.

I began to question this process. If most of these lawsuits were going to settle anyway, why couldn't they be settled earlier, and in a more satisfying way or with a better result?

One Sunday morning in early 1987 I opened up "The Washington Post" and saw a full-page article on this new settlement technique called "mediation." The article described the mediation process and its advantages and sought applicants to undergo training to become mediators for the D.C. Mediation Center.

The Center offered free mediation services to inner-city residents on a wide variety of disputes. It was to be a 45-hour training course and required a one-year commitment to mediate, on a pro bono basis, one night a week at the D.C. Mediation Center.

I immediately applied to be part of the training program, and began mediating at the Center and for the D.C. Superior Court. The benefits of the process were clear – less expensive, less time-consuming, and less stressful than litigation.

It is also a private process that offers flexibility and creativity in resolving disputes. Importantly, it allows disputes to be resolved in ways that do not have to

be a complete win for one party and a complete loss for the other. It allows parties to remain in control of their dispute, can salvage relationships, and is often a satisfying process (even if an agreement is not reached).

I tried to speak to other lawyers about the possibility of trying mediation, but, at the time, the predominant attitude among trial lawyers and litigators was that anything short of litigation was a sign of weakness. My frustration returned.

It later occurred to me that there was more hope for the acceptance of mediation if it was taught, or at least introduced, to law students before the traditional approaches were passed down to them in practice. My interest in mediation and other alternative dispute resolution (ADR) methods, was a large part of why I left law practice to become a law professor.

My new position as the Director of the Lodestar Mediation Clinic seems to be the next logical step in my efforts to promote mediation. I want to not only influence law students, but also to go out into the community and to the courts and contribute to the continued growth and acceptance of mediation.

MEDIATION CLINIC UPDATE by Robert Dauber

Dramatic changes are in the works for the Mediation Clinic. With the generous assistance of The Lodestar Foundation, the College will embark on a five-year plan to expand and diversify its clinical program. The plan includes the addition of faculty resources, increased enrollment, an interdisciplinary focus and the development of projects designed to build knowledge about conflict management and alternative dispute resolution within the local business and legal communities.

The College has taken its first big step by hiring Professor Ann Woodley as Director of the Lodestar Mediation Clinic. Woodley has been a tenured member of the law faculty at The University of Akron for the past decade, and is a noted scholar in the fields of ADR and Civil Procedure. She has experience designing ADR curricula and teaching mediation in law school, and has served as both a mediator and an arbitrator in various commercial and court-connected programs.

Prior to joining the faculty at The University of Akron, Woodley was a trial lawyer in the Washington, D.C. office of Winston & Strawn and, in the early 1980s, clerked for the Honorable Carl Muecke in the U.S. District Court for the District of Arizona. Woodley is an alum of the A.S.U. College of Law and is looking forward to "coming home" to help us launch our expanded program.

The existing Mediation Clinic was established in 1996. It is a four-credit course with enrollment limited to 12 students. The students receive skills training and then are assigned to serve as mediators for civil cases in the small claims divisions of limited-jurisdiction courts. They also attend three to four hours of seminar instruction per week during which they discuss their fieldwork experiences. Over the next few years, the College hopes to double the enrollment in this popular course.

In addition to increasing the number of law students, the College will invite graduate students from other departments on campus to enroll in the class. The interdisciplinary student makeup is sure to broaden the perspectives of all participants in the classroom discussions.



CLINICAL OPPORTUNITIES

The ASU College of Law offers four clinical opportunities to our students: (1) the Civil Practice Clinic; (2) the Criminal Practice Clinic (formally known as the Prosecutor Clinic); (3) the Public Defender Clinic; and (4) the Mediation Clinic.

Under our sequential curriculum, most students take Lawyering Theory & Practice in their second year of law school and then move into a clinic in their second or third year. Students can also select among a variety of simulation based courses including Trial Advocacy and Negotiation.

Thank You

The College of Law thanks the following judges and lawyers for participating as adjunct professors in the Clinical Program. Our law students have benefited tremendously from your perspective and dedication.

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